IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3165 OF 2004

IN

SUIT NO.2931 OF 2002

Nirmala N.Datar and others. ... Plaintiffs.

vs.

Hajra Khatun Shakeel Ahmed & others. .... Defendants.

Mr.Rishabh Shah i/b. Divekar & Co. for Plaintiffs.

Mr.A.M.Saroagi, for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 15th September,2005

P.C.:-

1. Heard the learned Counsel for both the sides. Perusal of affidavit dated 9th March,2004 filed on behalf of the defendants, the copy of which is at Exhibit F to the Notice of Motion, shows that the defendants have stated therein thus:-

> "Thus total amount of Rs.42,400/- was received by the plaintiffs during the pendency

> of the said Small Causes Court Suit and a sum of Rs.70,000/- towards deposit as per agreement dated 10.5.1969 total amounting to Rs.1,12,400/- and a sum of Rs.2,00,000/- is deposited in this Hon'ble Court as per order dated 5.8.2003 by His Lordship Mr.Justice Bobade. Thus total amount received by the plaintiffs comes to Rs.3,12,400/-. I say that the suit is filed in the month of August,2002 and arrears from February,1980 to February,2004 at the rate of Rs.1,500/- is amounting to Rs.4,33,500/- less Rs.3,12,400/-. Thus, I am liable to pay only a sum of Rs.1,21,100/- to the plaintiffs after deducting amounts paid by me and I am ready and willing to pay the same to the plaintiff or deposit in this Hon'ble Court."

The defendants have thus admitted that the amount of Rs.1,21,100/- is payable by the defendants to the plaintiffs. While arriving at this amount of Rs.1,21,100/-, the defendants have taken into consideration the amount of Rs.2,00,000/- which was deposited by them in relation to the ad-interim order passed by the Court which was permitted to be withdrawn by the plaintiffs. But thereafter the amount has been

brought back by the plaintiffs and presently that amount is lying in deposit with the Prothonotary and Senior Master of this Court. If that amount is taken into consideration then according to the defendants, the total amount payable by the defendants to the plaintiffs is Rs.3,21,100/-. In this view of the matter therefore, the notice of motion is disposed of in the following terms:-

(i) The plaintiffs are permitted to withdraw the amount of Rs.2,00,000/- (Rupees Two lakhs only) deposited by the defendants in this Court with accruals if any.

(ii) The defendants are directed to deposit amount of Rs.1,21,100/- in this Court within a period of Four months from today with due intimation to the plaintiffs.

(iii) On the amount being deposited, the plaintiffs are permitted to withdraw that amount. The Prothonotary and Senior Master of this Court shall permit the plaintiffs to withdraw the amount of Rs.2 lakhs and the further amount of Rs.1,21,100/- on the plaintiffs giving undertaking to this Court undertaking to re-deposit these amounts, if so directed by this Court and on such terms and conditions as may be directed by this Court.

(iv) It is clarified that the deposit of amount by the defendants and its withdrawal by the plaintiffs is subject to final order that may be passed in the suit.

Notice of Motion is disposed of.